

REMARKS

This is in response to the outstanding Office Action dated July 22, 2008. Applicant had previously cancelled claims 1-4, 6-12, 15-20, and 22-27 and 31 without prejudice or disclaimer. The claims remaining in the application are 5, 13-14, 21, 28-30 and 32-40. Applicant requests reconsideration of the application in light of the following remarks.

In the outstanding office Action, independent Claims 5, 13, 14 and 21 were finally rejected under 35 U.S.C. §103(a) as being unpatentable over Diamond (4,148,168) in view of the King et al. (6,220,329) and Steiner, Jr. et al. (6,174,403) references. Applicant contends that all the claims are patentable over these references, and requests withdrawal of the rejection under 35 U.S.C. §103(a).

Independent claim 5 provides a method of covering a roof deck comprising the steps of laying a course of laminated starter shingles, wherein the laminated starter shingles include an underlay sheet laminated below an overlay sheet and wherein the height of the overlay sheet of the starter shingle is greater than the height of the underlay sheet of the starter shingle.

Independent claims 13 and 14 recite a laminated starter shingle wherein the laminated starter shingles include an underlay sheet laminated below an overlay sheet and wherein the height of the overlay sheet of the starter shingle is greater than the height of the underlay sheet of the starter shingle.

Independent claim 21 provides a roof covering for application to a roof deck, the roof covering having a laminated starter shingle. The starter shingle includes an underlay sheet laminated below an overlay sheet, wherein the height of the overlay sheet of the starter shingle is greater than the height of the underlay sheet of the starter shingle.

In the outstanding Office Action, the Examiner stated that the combination of the Diamond, King and Steiner, Jr. et al. references meets all of the limitations of Applicant's independent Claims 5, 13, 14 and 21.

However, the cited references of Diamond, King and Steiner Jr. et al., either individually or in combination do not meet the structure of the invention as claimed in Applicant's independent Claims 5, 13, 14 and 21 for several reasons.

First, the cited references taken individually do not disclose or suggest the laminated starter strip defined in Applicant's independent claims 5, 13, 14 and 21 to those of ordinary skill in the art. The Examiner correctly points out, on page 3 of the outstanding Office Action, that the Diamond reference lacks a laminated starter strip. Rather, the Diamond reference provides a "course I" of standard single layer three tab shingles (14). The Steiner Jr. et al. reference also does not provide a laminated starter shingle. Rather, the Steiner Jr. et al. reference provides a multi-layered covering shingle having different elevations with differently colored granules (column 2, lines 18-24). Finally, the King reference does not disclose a laminated starter strip. Rather, the King reference discloses a three-layer laminated roofing shingle having a bottom layer (126), a middle layer 124 and a top layer 122 (Column 15, Lines 49-52). The laminated roofing shingles disclosed in the King reference are standard covering shingles intended to provide both weather resistance and an attractive appearance. One of ordinary skill in the art would understand that the roofing shingles disclosed in the King reference are intended to be installed in courses over starter shingles.

Second, the combination of the Diamond, King and Steiner Jr. et al. references, as suggested by the Examiner, results in a structure that is inoperable for its intended purpose. Specifically, the Examiner asserted it would have been obvious to modify the method disclosed in the Diamond reference to include a laminated starter strip as provided by the King reference.

The Examiner further asserted it would have been obvious to make the laminated layers of different heights to affect a different and enhanced appearance as taught by the Steiner, Jr. et al. reference.

However, one of ordinary skill in the art would appreciate the three-layer laminated roofing shingle disclosed in the King reference cannot be used as a starter strip. A starter strip is a unique first course of shingles applied along the lower or eave edge of a roof deck before the commencement of the application of standard shingles. The purpose of a starter strip is to provide a base for subsequent courses of covering shingles and to ensure proper weatherproofing of the roof system by sealing gaps beneath the covering shingles. A starter shingle must provide these functions while providing an attractive appearance when installed beneath the covering shingles. The laminated roofing shingles of King include raised portions (148, 150, 152 and 154) and lower portions (136, 138, 140 and 142). In the event the laminated roofing shingle of King is installed as a starter shingle and subsequently covered by a course of covering shingles, the lower portions (136, 138, 140 and 142) would be exposed beneath the course of covering shingles. The exposed lower portions (136, 138, 140 and 142) would form gaps in the roofing system. The gaps would prohibit proper weatherproofing and would provide an unsightly appearance. The gaps formed by the laminated roofing shingle disclosed in the King reference would result in an unacceptable roof structure. Accordingly, the laminated shingle as provided by the King reference cannot be used as a starter strip and the resulting combined structure using the King laminated shingle, as suggested by the Examiner, would be inoperable for the intended purpose as a starter shingle.

Further, the three-layer laminated roofing shingle disclosed in the King reference cannot be modified for use as a starter strip. As one of ordinary skill can appreciate, there are several standard practices for providing starter shingles. A first practice involves modifying a standard three tab single-layer

shingle by cutting the shingles to remove the tabs. The remaining single-layer portion of the shingle is installed as a starter shingle beneath a subsequent course of the standard three tab single-layer shingles. A second method involves purchasing commercially available starter shingles for use with laminated shingles. The commercially available starter shingles are single-layer shingles that form a weather sealing and appearance enhancing layer beneath the course of subsequent laminated shingles. In order to use the roofing shingle of King, the shingle would have to be cut lengthwise to remove the raised portions (148, 150, 152 and 154). In the event the laminated roofing shingle of King were to be modified to produce a starter shingle by removing the raised portions (148, 150, 152 and 154), the edges of the three layers (126, 124 and 122) would be exposed beneath the course of covering shingles. The exposed edges of the three layers, on such a starter shingle, would provide an unsightly appearance when installed beneath a subsequent course of laminated shingles. Therefore, the modification suggested by the Examiner would not result in an acceptable starter shingle.

Accordingly, even if the Diamond, King and Steiner Jr. et al. references are combined in a light most favorable to the Examiner, the resulting combination does not meet the structure of the invention as claimed in Applicant's independent Claims 5, 13, 14 and 21 and the resulting combination is inoperable for the intended purpose as a laminated starter strip. In this regard, Applicant's independent Claims 5, 13, 14 and 21 are non-obvious under 35 the U.S.C. §103 in view of the Diamond, Steiner Jr. et al. and King references. Therefore, the rejection of Claims 5, 13, 14 and 21 are improper and the claims are patentable as written.

Claims 28-30 depend from Claim 5 and should be patentable for at least the same reasons as Claim 5, as set forth above.

Claims 32-33 depend from Claim 13 and should be patentable for at least the same reasons as Claim 13, as set forth above.

Claims 34-35 depend from Claim 14 and should be patentable for at least the same reasons as Claim 14, as set forth above.

Claims 36-40 depend from Claim 21 and should be patentable for at least the same reasons as Claim 21, as set forth above.

In view of the above remarks, the Applicant has shown that the claims are in proper form for allowance, and the invention, as defined in claims 5, 13-14, 21, 28-30 and 32-40, is neither disclosed nor suggested by the references of record. Accordingly, the Applicant respectfully requests reconsideration and withdrawal of the rejections of record, and allowance of all claims.